



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
HARRISBURG, PA. 17120

ERNEST D. PREATE, JR.
ATTORNEY GENERAL

July 28, 1992

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FILE

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14th FLOOR
STRAWBERRY SQUARE
HARRISBURG, PA 17120
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
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FCC MAIL BRANCH

Public Protection Division
14th Floor Strawberry Square
Harrisburg, PA 17120
(717) 787-9716

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
1919 M. Street, N.W., Room 22
Washington, D.C. 20554

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JUL 29 1992

Dear Ms. Searcy:

FCC MAIL BRANCH
Re: RM-7990


Enclosed please find an original and nine copies, a corrected version, of the Reply Comments in the above captioned matter filed on behalf of the States listed in the document and the National Association of Attorneys General, 900 Number Subcommittee.

These Reply Comments were filed on Tuesday, July 28, 1992. This amended version is filed to account for the fact that certain states signing on to the Reply Comments were omitted from the original version. This is the only change made in the document.

Kindly substitute the corrected version of these Reply Comments for the version originally filed. All parties have received the corrected version of the Reply Comments.

Please contact me if you have any comments or questions.

Sincerely,


Daniel Clearfield
Executive Deputy Attorney General

No. of Copies rec'd 0 + 9
List A B C D E

Enclosures
DC/ss/avcw
cc: Downtown Copy Center

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving Reply Comments for
Petition for Clarification and Modification, by first-class mail, postage
prepaid, to the persons listed on the attached list.

A handwritten signature in cursive script, appearing to read "Daniel Clearfield", written over a horizontal line.

Daniel Clearfield
Executive Deputy Attorney General
Office of Attorney General
14th Floor Strawberry Square
Harrisburg, PA 17120
(717) 787-9716

DATE: July 27, 1992

FCC PAY PER CALL SERVICE LIST

SOUTHWESTERN BELL TELEPHONE COMPANY

John Paul Walters, Jr.
1010 Pine Street, Room 2114
St. Louis, Missouri 63101

PILGRIM TELEPHONE, INC.

Walter Steimel, Jr.
Fish and Richardson
601 13th Street, N.W.,
Fifth Floor North
Washington, DC 20005

UNITED STATES TELEPHONE ASSOCIATION

Martin T. McCue
Vice President and General Counsel
U.S. Telephone Association°
900 19th Street, NW Suite 800
Washington, DC 20006-2105

VOICELINK, INC.

Glenn B. Manishin
BLUMENFELD & COHEN
1615 M Street, N.W., Suite 700
Washington, DC 20036

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
AND THE PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE

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Pennsylvania Office of Consumer Advocate
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The National Association of State Utility Consumer Advocates
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ALABAMA PUBLIC SERVICE COMMISSION

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and
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Director of Telecommunications

CONSUMER ACTION

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SPRINT COMMUNICATIONS COMPANY, INC.
Michael B. Fingerhut
1850 M Street, N.W., 11th Floor
Washington, DC 20036

MCI TELECOMMUNICATIONS CORPORATION
Mary J. Sisak
1801 Pennsylvania Avenue, N.W.
Washington, DC 20036

AMERICAN TELEPHONE AND TELEGRAPH COMPANY
Francine J. Berry
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Basking Ridge, NJ 07920

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JUL 29 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

PETITION FOR CLARIFICATION AND
MODIFICATION OF PAY-PER-CALL
RULES

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RM-7990

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JUL 29 1992
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REPLY COMMENTS OF STATE ATTORNEYS GENERAL
AND THE NAAG 900 NUMBER SUBCOMMITTEE

The States of Connecticut, Tennessee, Pennsylvania, New Jersey, Alabama, Arizona, Arkansas, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Vermont, Virginia, Washington, Wisconsin, Wyoming, and the 900 Number Subcommittee of the Consumer Protection Committee, of the National Association of Attorneys General (hereinafter "the States") hereby submit these reply comments to the comments filed by various parties in the above captioned Petition For Rulemaking regarding the request by the States for clarification and modification of the Pay-Per-Call Rules of the Federal Communications Commission.

I. Introduction and Summary

The vast majority of comments submitted concerning the States' proposal agree that the 800 number pay-per-call services should be prohibited unless coupled with the safeguards urged by the States.

The alternative "safeguards" urged by commenters who stand to profit from the continued proliferation of 800 number pay-per-call services are wholly inadequate to protect consumers and the reputation of legitimate 800 service users. These alternatives -- which would permit the rapid conversion of a "free" 800 call into a call for which the consumer must pay -- ignore the long, and until now uninterrupted, history of 800 number services as calls entirely free to the calling party. On the contrary, the evidence shows that the disclosures proposed by these parties are inadequate to overcome most consumers' powerful association of 800 services with toll-free calling. Moreover, the suggestion by one 800 service pay-per-call provider that the States' proposed rule cannot be legally or practically implemented is simply wrong. Interexchange carriers will be able to enforce compliance with the States' proposed rule as easily -- and as lawfully -- as other restrictions on the use of their services.

Finally, the States' support Southwestern Bell Telephone Company's proposal to ban automatic return collect calls.

II. The Comments Demonstrate the Need for a Rule Prohibiting 800 Number Pay-Per-Call Services.

Most of the Comments filed by various parties strongly support the States' call for a rule prohibiting 800 number pay-per-call services unless billing occurs through the use of a credit card or a presubscription arrangement. All of the long-distance carriers who submitted comments have indicated that their own tariffs now prohibit, with some exceptions, the use of 800 number services as a means of providing pay-per-call services. See, Comments of AT&T, MCI, and Sprint. In addition, comments by a regional Bell operating company, Southwestern Bell Telephone, also support the States' call for such a rule. Indeed, Southwestern Bell went further and called on the Commission to ban the use of automatically generated "reverse charge call back" services where the collect call is for the purpose of providing and billing a pay-per-call service. See, Comments of Southwestern Bell Telephone Company at 2.

In addition, several consumer groups and agencies representing telephone consumers have indicated strong support for the States' position. Consumer Action, a nationwide consumer education and advocacy group focusing on telecommunications issues and one of the first groups to bring this issue to the attention of the public, strongly supported the States' request for the rule change and provided other examples of abusive 800 number pay-per-call services. The National Association of State Utility Consumer Advocates and the Pennsylvania Office of Consumer Advocate, which represent utility consumers around the country and in Pennsylvania,

respectively, before both public utility commissions and the FCC, endorsed the States' proposal. The Alabama Public Service Commission also supported the States' proposal.

In light of this overwhelming support for the proposal urged by the States, the FCC should move expeditiously to stem the tide of abusive 800 number pay-per-call services which threaten to harm both consumers and the reputation of 800 number service as a toll free, no strings attached means of doing business.

III. The Minimal Protections Advocated by the Information Service Industry Should be Rejected.

Notwithstanding the strong support for a rule limiting 800 number pay-per-call services voiced by interexchange carriers, consumer groups and government agencies, several members of the information service industry have submitted comments opposing meaningful limitations on 800 number pay-per-call services. Voicelink and Pilgrim Telephone Inc. (both information services which either presently or presumably intend to use 800 numbers for providing pay-per-call services), and VRS Billing Systems (a billing agent for such information service providers) have submitted comments which, while conceding current abuses, propose 800 pay-per-call "protections" which would provide little if any assistance to consumers.

While agreeing that 800 number service should not be used to provide information services which automatically bill customers by the use of "ANI" or by the use of detailed billing provided by the carrier, these

parties have insisted that 800 number service should remain available to be used for pay-per-call programs where consumers are induced to call an 800 number but are billed only after the consumer takes some specific, affirmative action to "permit" billing, such as touching 1 or entering an ID number or telephone number. Deceptive, confusing or misleading 800 number pay-per-call services should be dealt with, claim these parties, on a case-by-case basis by enforcing the laws against such activities.

Underlying this position is an assertion that 800 number pay-per-call services that are billed without using an existing pre-arranged billing mechanism can be provided without being inherently deceptive and misleading. There is, however, overwhelming evidence that providing pay-per-call services over 800 number lines is inherently misleading unless an established billing mechanism such as a credit card or presubscription mechanism is used.* The comments of the various parties establish quite clearly that 800 number service is universally viewed as toll free and not subject to charges. For example, AT&T has pointed out that its tariff

* The existence of a presubscription arrangement provides sufficient assurance that the consumer is aware of the pay-per-call nature of the particular 800 number call and eliminates the potential for confusion about charges. Similarly, it is reasonable to assume that a consumer who provides a credit card number after hearing a preamble that conforms to the Pay-Per-Call Order requirements usually is contemplating that he or she will be billed for the ensuing call. If a misunderstanding does occur the consumer can use the mandated credit dispute resolution procedure to attempt to obtain a credit. Such a dispute resolution mechanism does not exist if the call is billed through a billing agent or by the service provider itself.

describes 800 service as being "without charge to the caller," (AT&T comments at 3) and that the service is "widely advertised and provided as a toll-free service for callers." Id.

Similarly, Southwestern Bell observes that:

[F]ew things are as widely accepted as the toll free nature of 800 service. Years of advertising by businesses throughout the country have cultivated this image.

Comments of Southwestern Bell Telephone Company at 2-3. Likewise, Consumer Action indicated that, based on their extensive experience with consumer complaints,

"consumers do not expect charges on 800 lines so a disclosure regarding price will not register. The disclosure is filtered through a firm belief that 800 calls are free and at best is confusing and contradictory.

Comments of Consumer Action at 3.

Two other groups with extensive experience with consumer complaints about pay-per-call services, the Pennsylvania OCA and the National Association of State Utility Consumer Advocates ("NASUCA"), provided additional evidence of the inherent deception in 800 number pay-per-call services:

The use of an 800 number for pay-per-call services will certainly lead to confusion on the part of customers if not complete deception. Customers have grown to rely upon 800 numbers as a convenient way of placing long-distance phone calls without a charge. Allowing pay-per-call services to be imposed on a 800 number call should not be permitted to degrade this type of beneficial service and should be prohibited as NAAG has suggested.

OCA and NASUCA Comments at 2. Accord, Comments of the Alabama Public Service Commission at 3 ("due to the general perception consumers have that 800 numbers equate to a free call, and the inherently misleading nature of these new 800 pay-per-call numbers, we ... support the NAAG request...").

Even the American Public Communications Council ("APCC"), a trade group of independent public pay phone operators, agree that telephone consumers "have grown accustomed to, and rightfully expect, toll-free 800 calls." APCC Letter Comments at 1.

As this experience shows, when a consumer uses an 800 service that he or she assumes to be free, but is then informed on the phone call that she will, nonetheless, be charged if she takes some action, such as dialing a telephone number or an "award number," this information simply "will not register" (Consumer Union Comments, supra.) no matter how clearly the disclosure is made. The first message, in effect, cancels the conflicting information out and the consumer concludes that the "charge" will be presented in the future for some service she hasn't yet received, thus giving her another opportunity to make a purchase decision. Consumers are very likely to be confused and they will receive a bill for services that they did not know they had agreed to purchase and likely did not want.

Accordingly, merely requiring affirmative action before charging can occur will do little or nothing to eliminate the inherently misleading nature of using 800 number to provide pay-per-call services.

Indeed, the inadequacy of the protections provided by "affirmative" action was highlighted in the 800 pay-per-call promotion that formed the primary impetus for the States' Petition. The Allied Marketing Group Sweepstakes Clearinghouse promotion (discussed in the States' original Petition at paragraphs 7-8) in fact required callers to input a several digit "sweepstakes awards number" during the 800 number telephone call before they received a bill. Presumably this input would be sufficient to allow for the billing of services if the position advanced by the information service industry was adopted. Yet, Attorneys General around the country have received a great number of complaints from consumers about this promotion claiming that they were billed for services without their knowledge or consent. Attached to these Reply Comments are statements and affidavits from some of the Attorneys General who received complaints about the Allied Marketing Sweepstakes Clearinghouse promotion. Texas alone received approximately 600 complaints concerning this promotion.

Ironically, while the States would vigorously dispute this assertion, Allied has claimed in its previous filings that it fully informed consumers that they would be charged for the "interactive information service" that they were offering and only billed consumers after they took a specific, affirmative act to permit charging. These complaints are graphic evidence that simply to require some affirmative action on the part of consumers before billing can occur will not remedy the inherently deceptive nature of an 800 number pay-per-call service.

Nor is it sufficient to claim that any "deceptive" 800 number services can be handled simply through "case-by-case" law enforcement activity. The information service industry is well aware that the majority of consumers never complain about telemarketing rip-offs and only a very small percentage ever actually receive credits or refunds even if they do complain. According to a recent survey conducted by Lou Harris and Associates on behalf of the National Consumers League and the Reference Point Foundation, 92% of Americans have been contacted via postcards regarding some promotion that entailed a telephone call to find out about a prize offer (similar to the facts involved in the Allied scheme, for example). Thirty percent of those contacted, an enormously large number for a mail solicitation, actually responded to the postcards. Of those who responded, however, 69% received no prize. Most importantly, only 31% of the people who reported that at one time or another they were cheated out of their money ever reported the problem to an official and only 9% of those consumers got their money back. Telephone-Based Fraud A Survey of the American Public Lewis Harris and Associates at 5-7. Considering the extremely underreported nature of consumer fraud generally, and the pervasive nature of the problem of telemarketing fraud specifically, the Commission should reject the invitation to rely on case-by-case law enforcement actions as sufficient to protect consumers for misleading or deceptive 800 number pay-per-calls.

IV. Pilgrim Telephone's Claim that the States Proposed 800 Number Rule Cannot be Effectively or Legally Implemented by Interexchange Carriers is Incorrect.

Pilgrim Telephone Company* has also argued that requiring 800 number service providers to prohibit the use of 800 number for pay-per-call services "cannot be legally or practically implemented by ICs." Pilgrim Comments at 4-5.** It goes on to suggest that ICs would have to monitor each individual call to enforce such a rule, a questionable procedure under the law and practically difficult.

In fact, all three of the major interexchange carriers have implemented tariff provisions which create just these kind of restrictions as a prerequisite to the provision of an 800 number service. Presumably neither the interexchange carriers who filed the tariffs nor the Commission have taken the view that it is "legally impermissible" or impossible to require certain conditions for the use of 800 service, including that the

* Pilgrim Telephone Company is the service provider complained about in the complaint attached to the Comments of Southwestern Bell concerning an 800 number/automatic collect call back scheme. See, Attachment to Comments of Southwestern Bell Telephone Company.

** The United States Telephone Association made a similar claim of practical difficulty in its Comments: USTA Comments at 2-3.

service may not be used for pay-per-call. Moreover, Pilgrim's view is inconsistent with the authority that interexchange carriers can exercise in assuring that their services are used in a reasonable and lawful manner. There is no doubt, for example, that interexchange carriers can prevent subscribers from using their service for obscene calls, gambling activities, or for continued abusive conversations. The exercise of this authority does not require interexchange carriers to monitor each and every telephone call made over their lines. All that is required is that subscribers take the service understanding the conditions imposed upon them for the use of 800 service and with the understanding that if they fail to adhere to these requirements their 800 service can be terminated. Indeed, establishing certain limitations for the provision of pay-per-call service transmission by common carriers is precisely the approach utilized by the Commission in promulgating its original Pay-Per-Call rules. Pilgrim is already subject to the requirement that it provide its pay-per-call service in accordance with these rules and it faces the termination of its service if it fails to follow them. See Pay-Per-Call Rules, Sec. 64.710. Thus Pilgrim's arguments have been rejected previously by the Commission in approving the Pay-Per-Call Rules and should be rejected here.

V. The States Support Southwestern Bell Telephone's Call For Additional Protections Regarding Automatic Return Collect Calls.

In addition to supporting the request by the States for a rulemaking concerning 800 pay-per-call services, Southwestern Bell Telephone

Company has asked the Commission to amend its rules to ban any service that attracts callers through the use of an 800 number but then calls them back with an automatically dialed collect call. When this call is accepted by the called party it is billed as a pay-per-call "collect" call. The States support Southwestern Bell's request for ban on these kinds of services for the same reason that 800 pay-per-calls should be restricted. Automatic return collect calls are inherently deceptive in that they confuse the caller by attracting them with a "free" 800 number call and then inducing them to accept a return call. Frequently, the charges are not spelled out clearly and callers are confused about whether the collect call will require a charge or not. See Attachment to Comments of Southwestern Bell Telephone.

Moreover, the charges for these types of third party collect calls far exceed the rate charged by long distance and local exchange companies for the same type of call. Consumers further are taken advantage of because they frequently are unaware that the third party collect service provider and the service provider stands to profit if the call can be lengthened unnecessarily.

The inherently deceptive nature of these kinds of calls make it appropriate to include them in any rule setting standards and limitations for 800 number services.

VI. The Exceptions to the Ban on 800 Number Service Should Apply Only to Presubscription Arrangements and Instances in Which Calls Are Billed to a Credit Card.

The states have supported two exceptions to their call for a ban on 800 number pay-per-call services. First, where a customer has presubscribed to a particular service or service provider, there is little likelihood of deception or confusion. Second, the States, also recognize that, where the call is billed through a credit card, and all appropriate disclosures and preambles are provided, it is reasonable to assume that a caller will be aware that a charge is going to be incurred for the call.

In drafting any rule with these exceptions, however, it is important to ensure that 800 pay-per-call services cannot continue to exist simply by requesting a credit card number without billing the call to that credit card. In addition to the obvious opportunities for confusion and deception, allowing 800 number pay-per-call service billing simply when a calling party provides a credit card number creates a potential mismatch between the person or entity in whose name the credit card is issued and the person or entity who would receive the bill for such service (the telephone customer). Both Consumers Union and the American Association of Payphone Services have pointed out that a rule which permits 800 number pay-per-call services merely to request a credit card rather than bill the charge to that credit card creates the potential for significant deception and should not be permitted.

Finally, the States note that no party -- not even Allied Marketing Group -- has opposed the request for clarification that when and if pay-per-

call services are provided using an 800 number (by virtue of the credit card exception, for example) the FCC's pay-per-call rules must be followed.

There is unanimous support for such a clarification and we urge the Commission to issue the appropriate admonition.

Conclusion.

The states listed below and the National Association of Attorneys General 900 Number Subcommittee hereby respectfully request that the FCC adopt the petition of the states for limitations and restrictions on the use of 800 number pay-per-call services and to reject the comments of parties opposing those restrictions.

Respectfully submitted,

State of Connecticut
Richard Blumenthal
Attorney General

By: Neil G. Fishman /sc
Neil G. Fishman,
Asst. Attorney General
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Hartford, CT 06105

State of Tennessee
Charles W. Burson
Attorney General

By: Cynthia Carter
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State of New Jersey and
NAAG 900 Number Subcommittee,
Consumer Protection Committee
Robert Del Tufo
Attorney General and Chairman of
the Subcommittee

By: Sarah Fitzpatrick
Sarah Fitzpatrick
Asst. Attorney General
Richard Hughes Justice Complex
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Commonwealth of Pennsylvania
Ernest D. Preate
Attorney General
Daniel Clearfield
By: Daniel Clearfield
Executive Deputy Attorney General
14th Floor Strawberry Square
Harrisburg, PA 17120

(continued)

The following States Join in the filing of these Reply Comments:

STATE OF ALABAMA
JAMES H. EVANS, ATTORNEY GENERAL

STATE OF ARKANSAS
WINSTON BRYANT, ATTORNEY GENERAL

STATE OF ARIZONA
GRANT WOODS, ATTORNEY GENERAL

STATE OF FLORIDA
ROBERT A. BUTTERWORTH, ATTORNEY GENERAL

STATE OF IDAHO
LARRY ECHOHAWK, ATTORNEY GENERAL

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STATE OF WASHINGTON
KENNETH O. EIKENBERRY, ATTORNEY GENERAL

STATE OF WISCONSIN
JAMES E. DOYLE, ATTORNEY GENERAL

STATE OF WYOMING
JOSEPH B. MEYER, ATTORNEY GENERAL

ATTACHMENT

Statements Concerning Complaints to State Attorneys General Against
Allied Marketing Group's 800 Number "Sweepstakes Clearinghouse" Promotion.

States

1. Arkansas
2. Idaho
3. Pennsylvania
4. South Dakota
5. Tennessee
6. Texas
7. Vermont

RECEIVED

MAY 9 9 1983

FCC MAIL BRANCH

1 Arkansas

STATE OF ARKANSAS)
):
PULASKI COUNTY)

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JUL 29 1992

AFFIDAVIT

FCC MAIL BRANCH

I, Steve Coppinger, the undersigned, being first duly sworn, hereby state under oath as follows:


1. I am employed by the Consumer Protection Division of the Attorney General's Office for the State of Arkansas. My present position is Chief Investigator. As part of my work, I am the custodian of records and I maintain and oversee the business records for the Consumer Protection Division of the Arkansas Attorney General's Office.

2. To date, our office has received seventy-three (73) complaints regarding the 800 number sweepstakes promotion conducted by Allied Marketing Group, Inc.

3. The substance of the complaints indicate consumers were mailed a postcard notifying them that they had won a prize and that they could call a "toll free" 800 number to learn the description of the prize they had won. The consumer complaints further stated that a short time after they had called the number, they received a bill from Audio Telecom, Inc. which appeared to be a phone bill and which requested payment for use of the 800 number listed on the notification postcard.

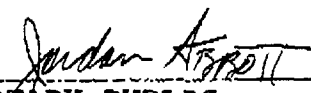
4. Consumers who have complained to the Attorney General's office about the 800 number sweepstakes promotion, feel that they should not have to pay for a call placed to a 800 number.

5. The Attorney General sued Allied Marketing Group, Inc. and Audio Telecom, Inc. in April, 1992, for violation of the Arkansas Deceptive Trade Practices Act in connection with the 800 number sweepstakes promotion. Our office is seeking injunctive relief, restitution to consumers, civil penalties and other remedies.



STEVE COPPINGER
AFFIANT

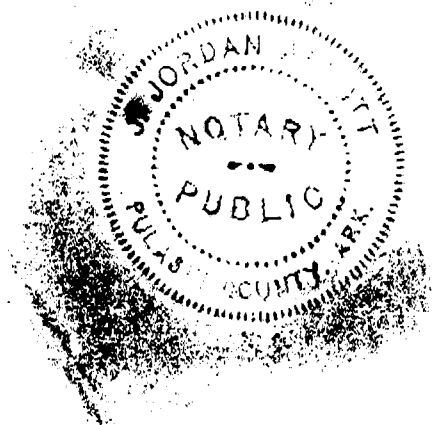
SUBSCRIBED AND SWORN to before me, the undersigned Notary Public on this 8th day of July, 1992.



NOTARY PUBLIC

MY COMMISSION EXPIRES:

September 10, 2001



2 Idaho



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL
BOISE 83720-1000

LARRY ECHOHAWK
ATTORNEY GENERAL

CONSUMER PROTECTION UNIT

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June 30, 1992

Dan Clearfield
Executive Deputy Attorney General
Office of the Attorney General
Public Protection Division
14th Floor Strawberry Square
Harrisburg, PA 17120

RECEIVED
JUN 29 1992
FCC MAIL BRANCH

RE: FCC Petition Comments

Dear Dan:

We received 12 written complaints concerning Allied's promotion. Most were very similar: The consumer received a bill for a call that they thought was free. I have enclosed the copy of one complaint that seems quite typical. Thanks for hard work on this issue.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Brett T. DeLange".

Brett T. DeLange
Deputy Attorney General
Public Affairs Division

Enclosure